

Subject-matter concerned	<input type="checkbox"/> 1) non-discrimination on grounds of nationality x 2) freedom of movement and residence - Article 7, Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Decision date	30/7/2014
Deciding body (in original language)	High Court
Deciding body (in English)	High Court
Case number (also European Case Law Identifier (ECLI) where applicable)	[2014] IEHC 384
Parties	OA and OPA v Minister for Justice, Equality and Defence
Web link to the decision (if available)	NA
Legal basis in national law of the rights under dispute	European Communities (Free Movement of Persons) No. 2 Regulations 2006, Regulations 2(3), 6(2)(a)(ii); 1996 Refugee Act (section 2); European Communities (Eligibility for Protection) Regulations 2006 (S.I. 518/2006); Directive 2004/38/EC, Art 7(1)(b)
Key facts of the case (max. 500 chars)	Note that this executive summary has the purpose to make us understand: 1. the facts of the case (so the “real life story”)

	<p>OA, a Kenyan national, came to Ireland on 31 March 2008 with her daughter (OEA) and claimed asylum. She was refused asylum because she failed to establish a well founded fear of persecution if returned to Kenya.</p> <p>2. the legal background against which the case unfolded (what are the relevant legal norms that are applied)</p> <p>This was upheld by the Refugee Appeals Tribunal and OA applied for subsidiary protection. Shortly after arriving in Ireland, OA had entered into a relationship with a German national of Nigerian origin. This relationship had floundered before the birth of their child, OPA, the second named applicant, born on 16 June 2010. Not realising that her child was a German national by descent, OA had also applied for asylum on OPA's behalf, but in January 2012, she applied for a Stamp 4 residency pursuant to Directive 2004/38 EC, "based on her parentage of a German citizen child." [para 13]</p>
Main reasoning / argumentation (max. 500 chars)	<p>Counsel for OPA argued that she is exercising her freedom of movement by electing to reside in Ireland. Her mother, the first named applicant (OA), has a right to remain in Ireland as established by Zhu and Chen v Secretary of State for Home Department [2004] if she satisfies the requirements of Art 7(1)(b) of the Directive 2004/38/EC. The Minister interpreted the Chen ruling as signifying OA's right to reside, but not to work in Ireland.</p>
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	<p>The key issue was whether a non-EEA national could be granted not only a right to reside in Ireland on the basis of her daughter's German citizenship, but also the right to work in Ireland. A restrictive interpretation of the meaning of sufficient resources would "constitute a disproportionate interference with the exercise of the fundamental right of freedom of movement, which is a central tenet of EU law enshrined in Article 21 TFEU," inconsistent with the CJEU's preference for a broad interpretation of freedom of movement, as expressed in its Chen judgment. [para. 82]</p>
Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)	<p>The Court decided that the Minister has to be mindful of the prospect of future resources, such as would stem from a job offer, when considering if the applicant meets the requirements of Article 7(1)(b) of the Directive 2004/38/EC. The Court declared that OA has the right to work pursuant to EU law and that "when assessing whether the applicant has 'sufficient resources,' the Minister is to take into account the definite prospect of future resources, such as those arising from a job offer which the applicant has accepted." [para. 85]</p>
Key quotations in original language and translated into English with reference details	<p>"[...] the imposition of a condition as to the origin of the resources, such as that as posited by the respondent - namely that they be extant at the time of the application - is not necessary for the attainment of the objective pursued, i.e. the protection of the public finances of the Member States. Moreover, it seems to me that there would be very few cases where, based on wealth acquired and in the possession of the primary carer at the time that the application is first made, and independently of the primary carer's earnings, a minor EU citizen would be able to show 'sufficient resources'." [para. 82]</p>

(max. 500 chars)	
Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article.	No